

INTERNAL REVENUE SERVICE

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September 25, 2000

The Honorable [REDACTED]
United States Senate
[REDACTED]

Attention: [REDACTED]

Dear Senator [REDACTED]:

This letter is in response to your inquiry dated August 4, 2000, on behalf of your constituent, Ms. [REDACTED]. In her letter Ms. [REDACTED] expressed concern that her son's father improperly claimed the Hope Education Credit for college expenses paid in 1999 by her and her son.

Ms. [REDACTED] said she is a single parent who has provided more than half of her son's support since his early childhood. In 1986, she and the father agreed that the father would both pay child support for his son and be allowed the dependency exemption. After receiving authorization from Ms. [REDACTED] of your office, Ms. [REDACTED] of this office contacted Ms. [REDACTED] by telephone and obtained additional information. Ms. [REDACTED] found that the son's father, as well as Ms. [REDACTED] and her son, had contributed to the son's 1999 college expenses

Ms. [REDACTED] inquiry involves the interaction of §§ 25A, 151, and 152 of the Internal Revenue Code. Under a rule provided in § 152(e), a child of parents who are divorced or legally separated is treated as receiving over half of his or her support from the parent with custody for a greater portion of the year. Thus, the "custodial" parent ordinarily is allowed the deduction provided by § 151 for the dependency exemption.

However, §152(e)(2) also provides a special rule permitting divorced or legally separated parents to treat the child as receiving more than half of his or her support from the noncustodial parent. If the conditions of the special rule are met, the noncustodial parent may take the deduction for the dependency exemption. The purpose of the special rule is to give the parents flexibility in tax planning. Thus, an agreement reached between Ms. [REDACTED] and her son's father allowing the father to claim the dependency exemption for the son is permitted by § 152(e).

Section 25A deals with the Hope Scholarship Credit, which allows a maximum credit of \$1,500 for qualified tuition and related expenses paid for an eligible student. In their conversation, Ms. [REDACTED] told Ms. [REDACTED] about two provisions of § 25A that are relevant to her situation. Section 25A(f)(1)(A)(iii) defines the term "qualified tuition and related expenses" to mean, in part, the college tuition and fees required for the enrollment or attendance of "any dependent of the taxpayer [for] whom the taxpayer is allowed a deduction under section 151." As noted earlier, Ms. [REDACTED] cannot claim the dependency exemption for her son if she agreed to allow her son's father to deduct it. Thus, although Ms. [REDACTED] paid college expenses for her son, those expenses are not "qualified tuition and related expenses" paid by her. Hence, she is not entitled to the credit.

In addition, § 25A(g)(3) treats a parent who is allowed the deduction for a dependent's exemption for a taxable year as paying the qualified expenses paid by the dependent in that year. Thus, assuming the other requirements of § 25A are met, the taxpayer entitled to claim the Hope Scholarship Credit in 1999 was neither Ms. [REDACTED] nor her son, but rather the son's father. This opinion is based on the premise that a valid agreement exists between Ms. [REDACTED] and the son's father under § 152(e)(2).

As Ms. [REDACTED] discussed with Ms. [REDACTED], the Congress enacted §§ 151, 152, and 25A, and the Internal Revenue Service has no authority to change them.

As requested, I am enclosing a duplicate copy of this response. I am also enclosing two copies of Notice 97-60, 1997-2 C.B. 310. That notice provides guidance on the Hope Scholarship Credit and the Lifetime Learning Credit.

If I can be of further assistance, please call me at (202) 622-4800 or Ms. [REDACTED], Identification Number [REDACTED], at (202) 622-4920.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (3)